

# **Emergency Notification Requirements**

## **Proposed Changes to the Requirements of 69-8-2 NMSA**

**Presentation to the New Mexico Interim Committee on Water and Natural Resources – Representative George Dodge, Jr. Chair**  
**October 6, 2014**

**Presented by Terence Foreback, NM State Mine Inspector (SMI)**  
**Randy Logsdon, Chair NM Mining Safety Board**  
**On behalf of the NM Mining Safety Board.**

### **Summary**

New Mexico law requires all mining operations in New Mexico to call the New Mexico Mine Emergency Operations Center within 30 minutes of the occurrence of an accident as defined in 69-8-2 NMSA 1978. The New Mexico law currently does not differentiate between surface and underground mines. Because some definitions in the current law are not entirely applicable or relevant to surface mines the NM Mining Safety Board recommends that a change be made in 69-8-2 to clarify the reporting requirements for surface mines. In addition, two provisions of 69-8-2 pertaining to underground mining contain criteria unrelated to the potential imperilment of miners and a language change is recommended.

### **Current New Mexico Statutory Definition of Accident**

69-8-2. Definitions. (2007)

As used in the Mining Safety Act [69-8-1 NMSA 1978]:

A. "accident", pursuant to 30 C.F.R. 50.2, means:

- (1) a death of an individual at a mine;
- (2) an injury that has a reasonable potential to cause death to an individual at a mine;
- (3) an entrapment of an individual for more than thirty minutes or that has a reasonable potential to cause death;
- (4) an unplanned inundation of a mine by a liquid or gas;
- (5) an unplanned ignition or explosion of gas or dust;
- (6) an unplanned mine fire in an underground mine that is not extinguished within ten minutes of discovery and an unplanned mine fire within a surface mine or surface area of an underground mine that is not extinguished within thirty minutes;
- (7) an unplanned ignition or explosion of a blasting agent or an explosive;
- (8) an unplanned roof fall at or above the anchorage zone in active workings where roof bolts are in use or an unplanned roof or rib fall in active workings that impairs ventilation or impedes passage;
- (9) a coal or rock outburst that causes withdrawal of miners or that disrupts regular mining activity for more than one hour;

- (10) an unstable condition at an impoundment, refuse pile or culm bank that requires emergency action in order to prevent failure or that causes individuals to evacuate an area or failure of an impoundment, refuse pile or culm bank;
- (11) damage to hoisting equipment in a shaft or slope that endangers an individual or that interferes with use of the equipment for more than thirty minutes; or
- (12) an event at a mine that causes death or bodily injury to an individual not at the mine at the time the event occurs

## **Proposed Change of Statute**

It is proposed to separate the definition of accident into two separate sections; section A for surface mines and section B for underground mines. The underground definitions will retain the 12 definitions listed above with modification of number 3 and 11 to state the accident would apply if it would cause a reasonable potential for death or endanger an individual. The surface mine definitions will retain six of the definitions and eliminate numbers 4, 5, 6, 8, 9, and 11. The details of the recommended changes by the Board are found in the Appendix 1 following the conclusion.

## **Statute Change Proposal Process**

The New Mexico Mining Safety Board (Board) is the Board responsible for promulgating mining safety regulations in the state and review of certain actions of the SMI. The Board is a statutory board authorized by the Legislature under 69-8-3 and appointed by the Governor. It represents and is balanced between non-management and management representatives from a cross-section of New Mexico's mining industry. The Board consists of 15 members including the SMI and Secretary of EMNRD as ex-officio members. Board membership can be found in Appendix 2. Rules in 19.6.2 NMAC relative to emergency notification were promulgated by the Board.

The Board began discussions in January, 2014 and unanimously approved language at their May meeting along with a request that the Legislature be approached regarding a possible change to the statutes regarding emergency notification.

## **Discussion of the Proposal**

The New Mexico law was enacted in 2007 following the events at the Sago Mine in West Virginia. Investigation following the disaster indicated that the mine operator did not notify the Mine Safety and Health Administration (MSHA) immediately upon learning of the disaster and mine rescue help was late in arriving. The NM Mining Safety Act was passed to ensure notification to state authorities immediately in order to begin the rescue process. New Mexico adopted language from federal regulations whose original intent was emergency notification procedures for underground mining. Several of the definitions have no direct applicability to surface mines. In addition, the law's intent is to ensure that the rescue of miners in accident scenarios occurs expeditiously. The law's definitions and purpose have limited applicability to surface mines. This has created confusion for surface mines and enforcement actions by the SMI in situations where notification had no value in a rescue scenario.

The Board also considered the following regarding the proposal:

1. One of the primary purposes of rapidly reporting accidents to the Bureau of Mine Safety is to afford the State Mine Inspector an early opportunity to initiate state-wide emergency response resources. If by its nature, an accident does not warrant such a response, then the exercise has no value.
2. Surface mines and local resources are fully capable of responding to certain incidents that do not represent a reasonable expectation of death or serious injury.
3. As an example, in 2012, a piece of equipment used for picking up and transporting dirt at the Chevron McKinley surface reclamation project caught fire. The operator exited the cab and was in no danger from the engine fire which burned more than 30 minutes. The SMI was not notified until the following day which resulted in a fine of \$10,000 to the operator. However, there is nothing in this scenario that the SMI could have done in the realm of rescue response.

## **Emergency Notification in Other States**

Only six other states use the same criteria as MSHA for all mines. Several other states use the same criteria but for coal mining only. Approximately half the states have some type of notification requirement but with much limited criteria. Neighboring western states have requirements as follows:

- Colorado – none
- Texas – none
- Arizona – call in required for four specific types of accidents
- Utah – MSHA definitions but for coal mining only
- Oklahoma – none
- Kansas – none
- Wyoming – same criteria as MSHA and New Mexico

## **Future Actions**

1. Presentation to the Water and Natural Resource Committee
2. Gap analysis based on comments from committee
3. Bill sponsor
4. Introduce in 2015 session

## **Conclusion**

The Mining Safety Board is in unanimous agreement with these recommendations and believes that the standard of safety in New Mexico mines will not be diminished by changing the definitions in 69-8-2 NMSA 1978. Conversely, this would relieve mine operators who may experience one of these events from the added burden of reporting and the risk of a violation for late reporting.

**Respectfully submitted on behalf of the New Mexico Mining Safety Board to the Water and Natural Resources Committee, October 6, 2014.**

## Appendix 1: Definitions

### 69-8-2. Definitions.

As used in the Mining Safety Act [69-8-1 NMSA 1978]:

A. "accident at a surface mine", ~~pursuant to 30 C.F.R. 50.2~~, means:

- (1) a death of an individual at a mine;
- (2) an injury that has a reasonable potential to cause death to an individual at a mine;
- (3) an entrapment of an individual ~~for more than thirty minutes or that~~ has a reasonable potential to cause death;
- ~~(4) an unplanned inundation of a mine by a liquid or gas;~~
- ~~(5) an unplanned ignition or explosion of gas or dust;~~
- ~~(6) an unplanned mine fire in an underground mine that is not extinguished within ten minutes of discovery and an unplanned mine fire within a surface mine or surface area of an underground mine that is not extinguished within thirty minutes;~~
- (7) an unplanned ignition or explosion of a blasting agent or an explosive;
- ~~(8) an unplanned roof fall at or above the anchorage zone in active workings where roof bolts are in use or an unplanned roof or rib fall in active workings that impairs ventilation or impedes passage;~~
- ~~(9) a coal or rock outburst that causes withdrawal of miners or that disrupts regular mining activity for more than one hour;~~
- (10) an unstable condition at an impoundment, refuse pile or culm bank that requires emergency action in order to prevent failure or that causes individuals to evacuate an area or failure of an impoundment, refuse pile or culm bank; ~~or~~
- ~~(11) damage to hoisting equipment in a shaft or slope that endangers an individual or that interferes with use of the equipment for more than thirty minutes; or~~
- (12) an event at a mine that causes death or bodily injury to an individual not at the mine at the time the event occurs;

B. "accident at an underground mine or the surface areas of an underground mine", ~~pursuant to 30 C.F.R. 50.2~~, means:

- (1) a death of an individual at a mine;
- (2) an injury that has a reasonable potential to cause death to an individual at a mine;
- (3) an entrapment of an individual ~~for more than thirty minutes or that~~ has a reasonable potential to cause death;
- (4) an unplanned inundation of a mine by a liquid or gas;
- (5) an unplanned ignition or explosion of gas or dust;
- (6) an unplanned mine fire in an underground mine that is not extinguished within ten minutes of discovery ~~and~~ ~~or~~ an unplanned mine fire within a ~~surface mine or~~ surface area of an underground mine that is not extinguished within thirty minutes;
- (7) an unplanned ignition or explosion of a blasting agent or an explosive;
- (8) an unplanned roof fall at or above the anchorage zone in active workings where roof bolts are in use or an unplanned roof or rib fall in active workings that impairs ventilation or impedes passage;
- (9) a coal or rock outburst that causes withdrawal of miners or that disrupts regular mining activity for more than one hour;
- (10) an unstable condition at an impoundment, refuse pile or culm bank that requires emergency action in order to prevent failure or that causes individuals to evacuate an area or failure of an impoundment, refuse pile or culm bank;

(11) damage to hoisting equipment in a shaft or slope that endangers an individual ~~or that interferes with use of the equipment for more than thirty minutes; or~~

(12) an event at a mine that causes death or bodily injury to an individual not at the mine at the time the event occurs;

~~B~~C. "employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee or to a place of employment;

~~C~~D. "employee" means any person suffered or permitted to work in a mining occupation or pursuit by an employer;

~~D~~E. "mine", pursuant to 30 C.F.R. 50.2, means:

(1) an area of land from which minerals are extracted in nonliquid form or, if in liquid form, are extracted with workers underground;

(2) private ways and roads appurtenant to an area described in Paragraph (1) of this subsection; and

(3) lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, equipment, machines, tools or other property, including impoundments, retention dams and tailings ponds, on the surface or underground, used in, to be used in or resulting from, the work of extracting such minerals from their natural deposits in nonliquid

## Appendix 2: Mining Safety Board Members

### Ex-Officio Members:

**Fernando Martinez**  
*EMNRD Point of Contact  
for David Martin*

**Director**  
Mining and Minerals Division  
505-476-3312 (office)  
fernando.r.martinez@state.nm.us

**Terence Foreback**

**State Mine Inspector**  
505-835-5460 (office)  
tforeback@admin.nmt.edu

**David Martin**

**Cabinet Secretary**  
Energy, Minerals and Natural Resources Dept.  
505-476-3400 (office)  
David.Martin@state.nm.us

### Non-Management Members:

**Position open**

**For information contact  
Board Chair Randy Logsdon or  
the State Mine Inspector**

**David E. Trujillo**

**United Steel Workers**  
P.O. Box 848  
Questa NM 87556  
44d.trujillo@gmail.com  
575-779-5757 (cell)

**Samuel Johnson**

**Westmoreland Coal Company**  
**United Mine Workers of America**  
505-728-7559 (cell)  
307/677-2536 (home)

**Monty Owens**  
**(Vice Chair)**

**San Juan Coal Company**  
**International Union of Operating Engineers**  
505-860-9350 (cell)  
[monty.a.owens@bhpbilliton.com](mailto:monty.a.owens@bhpbilliton.com)

**Jimmie Simpson**

**Mosaic Potash, Inc.**  
**United Steel Workers**  
575-361-5300 (cell)  
jsimpson414@yahoo.com  
jimmie.simpson@mosaic.com

**Jeff Cook**

**Peabody New Mexico Services**  
505-240-5906  
jcook@peabodyenergy.com

**Management Members:**

**Jeff Gordon**

**Intrepid Potash, New Mexico, LLC**  
575-706-7812  
Jeff.Gordon@intrepidpotash.com

**Larry Bush**

**United Nuclear Corporation**  
505-722-6651 (office)  
505-905-6651 (cell)  
Larry1.bush@ge.com

**Allen Norris**

**Grefco, Inc.**  
575-835-2892  
anorris@dicaperl.com

**Randy Logsdon (Chair)**

**Intrepid Potash, New Mexico, LLC**  
575-234-3622 (office)  
575-361-7050 (cell)  
randy.logsdon@intrepidpotash.com

**Howard Bartoo**

**Bartoo Sand and Gravel, Inc.**  
575-894-7181 (office)  
575-740-7182 (cell)  
bartoosandandgravel@windstream.net

**Mitchell (Mitch) Kruger**

**Freeport-McMoRan Tyrone Mining**

575-912-5601 (office)

575-313-1133 (cell)

Mitchell\_Kruger@FMI.com

**Contractor Member:**

**John Purcell**

**Golder Associates**

575-388-0118 (office)

575-200-6771 (cell)

jpurcell@golder.com